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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/944,383	09/04/2001	Necmettin Can	GAP0001-US	1273
28970	7590	10/19/2005	EXAMINER	
PILLSBURY WINTHROP SHAW PITTMAN LLP 1650 TYSONS BOULEVARD MCLEAN, VA 22102			CUFF, MICHAEL A	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 10/19/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

09/944,383

Applicant(s)

CAN ET AL.

Examiner

Michael Cuff

Art Unit

3627

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 11 July 2005.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 35-37, 43 and 47-53 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 35-37, 43, and 47-53 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 20050627.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Drawings

The drawings are objected to under 37 CFR 1.83(a). The drawings must show every feature of the invention specified in the claims. Therefore, the garment styles having a problem with fit or detailing, correlating data, showing a relationship, determining merchandising locations, reporting the merchandising locations, compiling style information must be shown or the feature(s) canceled from the claim(s). No new matter should be entered.

Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. The figure or figure number of an amended drawing should not be labeled as "amended." If a drawing figure is to be canceled, the appropriate figure must be removed from the replacement sheet, and where necessary, the remaining figures must be renumbered and appropriate changes made to the brief description of the several views of the drawings for consistency. Additional replacement sheets may be necessary to show the renumbering of the remaining figures. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Claim Rejections - 35 USC § 112

The following is a quotation of the first paragraph of 35 U.S.C. 112:

The specification shall contain a written description of the invention, and of the manner and process of making and using it, in such full, clear, concise, and exact terms as to enable any person skilled in the art to which it pertains, or with which it is most nearly connected, to make and use the same and shall set forth the best mode contemplated by the inventor of carrying out his invention.

Claims 35-37, 43, and 47-53 are rejected under 35 U.S.C. 112, first paragraph, as failing to comply with the written description requirement. The claim(s) contains subject matter, which was not described in the specification in such a way as to reasonably convey to one skilled in the relevant art that the inventor(s), at the time the application was filed, had possession of the claimed invention.

Many of the claims recite “the garment styles having a problem with fit or detailing”. The invention does not describe this feature. Per applicant’s own very broad disclosure, that data could suggest a problem with fit or detailing. The positive recitation of the data collected determines a problem with fit or detailing overstates what the specification discloses.

Claims 36 and 52 recite “showing, based on the correlation, the relationship...”. There are no relationships shown in the specification. The specification [0083] does state “Alternatively, the relationship between the frequency with which a garment is tried on and the garment’s location within the store could be helpful in merchandising products.” New claims 50 and 53 recite determining and reporting merchandising locations that attract greater consumer interest. There is no description of this in the specification.

Claim Rejections - 35 USC § 102

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 35 and 37 (as best understood by the examiner) are rejected under 35 U.S.C. 102(e) as being anticipated by Suzuki.

Suzuki shows, figure 9, a system and method for tracking and recognizing merchandise items (garments) taken into a fitting room by a customer for providing more efficient customer assistance. Each merchandise item is attached to a wireless tag (RFID) including a product identifier. A fitting room is equipped with an antenna/receiver unit, which interrogates the wireless tag of an item taken into the fitting room to be tried-on. A store server retrieves information about the item based on the product identifier, and presents such information to a store clerk through an in-store terminal. In addition, the server develops recommendation of other products that the

customer might be interested based upon the items taken into the fitting room. The server includes an analysis (determining) and recommendation (reporting) engine that analyses the style, color, and brand of each of the items in the fitting room, and develops recommendations accordingly. Figure 9 show a trial history including tried and purchased or not purchased data (correlation). Suzuki shows a relationship in as much as applicant does.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 36, 43, and 47-53 are rejected under 35 U.S.C. 103(a) as being unpatentable over Suzuki.

Suzuki shows all of the limitations of the claims except for specifying using the RF tags to determine their locations on a sales floor and moving garments to display locations that attract greater consumer interest.

The examiner takes Official notice that the moving of garments to display locations that attract greater consumer interest is a well-known practice in merchandising regardless of the product in order to increase sales.

Based on the discussion above, it would have been obvious to one of ordinary skill in the art, at the time the invention was made, to modify the Suzuki method to use

available data to facilitate the moving of garments to display locations that attract greater consumer interest in order to increase sales.

Response to Arguments

Applicant's arguments filed are moot based on the new rejection.


As for the official notice, which is similar to the last rejection, applicant is reminded to review proper traversal of official notice. One part of a proper traversal is to make a positive statement contrary to the examiners assertion of what is old and well known and to provide evidence. The examiner request that applicant speak with a department store manager about garment display locations and sales. The examiner believes that this information has been correlated for years by merchandisers and that it would be obvious to use the invention of Suzuki to help facilitate and confirm what they have been doing for years anyway.

Conclusion

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Michael Cuff whose telephone number is (571) 272-6778. The examiner can normally be reached on 8:00 to 5:30.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Alexander Kalinowski can be reached on (571) 272-6771. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

 10/12/05
Michael Cuff
October 12, 2005